

Children's Commissioner

By Frankie Rodney

History

Without doubt, the key issue in our education system in the last couple of years has been child protection. From the Debelle Royal Commission, and the shocking jump in reported child sexual abuse cases that followed, the multiple high-level sackings, a 'culture of cover-up', to the current crisis in Families SA - our government's failure to protect children in their care has been front page news for more than two years.

Years before these shocking crimes and the crises they caused were committed, SAASSO was calling for an independent Education Ombudsman. As the Debelle Report showed all too clearly, parents suffering the worst nightmare imaginable have nowhere to go. If you are unsatisfied with the conduct of South Australia's education department, your recourse has been to complain to ... South Australia's education department.

The DECD has been left to police itself and has sensationally failed.

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In 2013, however, the government proposed creating a Children's Commissioner - as had been recommended nearly a decade earlier by the Layton Report.

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This has caused much debate in the last year, as stakeholders such as the Law Society and SAASSO criticised the lack of independence and investigative powers of the Labor Government's proposed commissioner.

In response to numerous requests, overleaf we have published an excerpt from SAASSO's submission to the State Government on their proposed legislation - made to the Education Minister in September 2013.

In the lead up to the election earlier this year, the Liberals announced they too would create a Children's Commissioner, but with independent investigative powers. Recently the Liberals introduced their own version of a Children's Commissioner bill - which made it through the upper house of our state's parliament. You can read some of the key points of their bill on the following pages, also.

So, we have two proposals for a Children's Commissioner - both of which will struggle to pass parliament without some concession from the other side. We will see what happens....



SAASSO's Feedback on Labor's Proposed Legislation

The concept of a Child Commissioner to coordinate state authorities in respect to children, and to keep under review our state's policies as they relate to children, is a respectable idea. There is, however, the risk that in practical terms all that will result is another layer of bureaucracy.

The other purported role of the Commissioner is to be an advocate for children. In this respect, the Commissioner may well be a "toothless tiger". The bill conveys no formal powers to investigate - the key to performing as an advocate. The Commissioner can 'inquire' and 'report', but they cannot act.

The president of South Australia's Law Society said of the Commissioner, "There is a fundamental difference between investigating issues for the purposes of providing a report ... and a direct, independent role of intervening, and influencing individual issues...."

The Commissioner will have no power to intervene. They may request information and make a report, and that is the limit of their authority.

The Commissioner can request information from a government department, but if that department refuses to hand over documents, all the Commissioner can do is tell on them - by reporting them to the Minister and Premier, or put it in their report. There are no consequences for failing to supply documents.

The bill fails to establish the independence of the Commissioner. An advocate must be completely, inarguably independent of the government. This is particularly so for a child advocate, in light of the Debelle Inquiry, which revealed "failure at every level of the education department".

The process for appointing the Commissioner is vague. There is no specified selection process and no performance review process. Ultimately, it is all up to the Minister to select, by whatever process they choose, review and reappoint.

The bill states that the Commissioner is independent from the Minister's direction ... unless the Minister consults with them first and then chooses to give them directions. The only part of the Commissioner's role that is truly independent of Ministerial control, is the content of reports the Commissioner writes.

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Finally, there is the consequence of any inquiry by the Commissioner. All the Commissioner can do is send a report to the Minister. The Commissioner has no power to intervene in any child's case; they can only make recommendations to the Minister - who is not required to do anything. Provided the Minister eventually writes back and states why, they can ignore every recommendation and the case is closed.

This bill does not require anybody but the Commissioner and the Minister to know any details of the report, that a report exists, or that an incident has been 'investigated'.

Given the cover-up uncovered by the Debelle Inquiry, a more transparent process is needed. Again, as the Law Society President, John White concluded, "The Act should provide true autonomy for the role, with the commission free to set and pursue its own agenda, and to publish its own reports with recommendations that are not subject to change by the government". This bill does not accomplish this.

Unfortunately, SAASSO's concerns were not addressed. In fact, in the final version of the bill, the government got rid of the requirement for the Minister to consult with the Commissioner before giving them directions.



Children's Commissioner *Continued*

Liberal's Proposal

The primary object of the Liberal vision for a commissioner is 'to provide an authoritative voice and to hold decision makers to account on a systemic level'.

Independence

The Liberals have added Part 3.10 - Independence of Commissioner - stating that they are independent of control by anyone; there is no mention of even limited control by the Minister.

Appointment

The Liberals propose a panel select the commissioner, rather than the Minister - however, the Minister gets to appoint the panel and there are no stipulations in terms of stakeholders being represented on any panel, so in reality, it may still be a 'captain's pick'.

The Liberals also set a maximum tenure of seven years for any person holding the role.



Assistant Commissioners

Under the Liberal proposal, the commissioner may appoint assistants as they see fit.

Annual Report

A more prescribed list of mandatory inclusions in the Commissioner's annual report - including number of complaints received, number of investigations, matters referred to the police, prosecutions and recommendations made by the Commissioner.

Inquiries

The amendment bill specifies that the Commissioner has the power to inquire into matters at a systemic level. It also shifts the focus to more direct reporting between the Commissioner and any authority it is investigating, placing a requirement on the agency to respond to the Commissioner.

Investigation of complaints

Part 5 of the Liberal's bill gives the Commissioner power to investigate (either on receipt of a complaint or on their own initiative):

- any matter affecting the wellbeing or rights of an individual child, or group of children.
- A matter involving interaction between a government department and a child or their family.

Investigations

This bill gives the Commissioner tougher powers to acquire evidence, including:

- requiring people to appear and give evidence
- requiring people to produce documents and other evidence
- allowing the Commissioner to enter any building to carry out inspections
- ordering a state agency to cease activity while a matter is being investigated.

Investigators may enter and remain in any government building, take photographs and seize any item they believe may provide evidence. Investigators may be accompanied by police officers to carry out investigations.

The Liberal's bill also proposes penalties of a \$25,000 fine and 1 year imprisonment for anyone who fails to comply with the Commissioner, or who hinders or obstructs the Commissioner. ■